Supreme Court, U.S.
FILED

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No.

IN THE

Supreme Court of the United States

Craig Tekse

Petitioner

v.

William Mitchell, et al

Respondent

On Petition For Writ Of Certiorari
To The Minnesota Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Craig Tekse (pro se)
3735 Orchard Avenue N.
Minneapolis, Mn 55422
(763) 588-3086

Question Presented for Review:

Does someone whose vehicle was severely damaged in an automobile accident which was entirely someone else's fault, have a right to recover the intangible loss associated with ending up with a vehicle which has had major repair work done to it? The intangible loss is the uncertainty about the condition of the repaired vehicle; that is the uncertainty of not knowing if all damage was discovered or adequately repaired. This intangible loss has the potential of becoming tangible if problems arise later in the life of the vehicle.

APPENDIX

Statement of Basis of Jurisdiction	1.
Constitutional Provision Involved in this Case	1.
Statement of Case	2.
Contention in Support of Petition	4.
Order from Minnesota Supreme Court	5.
Opinion from Minnesota Court of Appeals	7.
Decision from Minnesota Court of Appeals	9.
Finding of Facts from Minnesota District Court	12.
Conclusion of Law from Minnesota District Court	14.
Judgment from Minnesota District Court	14.
Order for Judgment from Conciliation Court	16.

Statement of Basis for Jurisdiction:

1. The order of the Minnesota Supreme Court denying appeal of this case was filed on November 28, 2003.

2. The statutory provision believed to confer on the United States Supreme Court jurisdiction to review the matter in question is 28 §1257(a) because the petitioner claims a right under the Constitution.

Constitutional Provision Involved in this Case:

The Preamble of the Constitution states:

> We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general welfare and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

The Minnesota Appellate Court ruling is in conflict with the 'Establish Justice' intent stated in the preamble because the ruling does not acknowledge the intangible loss for which the petitioner sought relief.

Statement of Case:

The petitioner's pickup truck, which he had purchased brand new less than a year before, was severely damaged when it was rear-ended by another vehicle while the petitioner's vehicle was stopped waiting for a red stoplight to turn green. The driver of the other vehicle acknowledged that he was 100% at fault. The other driver's insurance company, Farmers Insurance, performed an estimate of the cost to repair the plaintiff's pickup truck. The estimate, which was submitted as evidence in both conciliation and district courts, includes 'frame set and pull' and 'possible hidden damage' as well as a considerable amount of body repair. The estimate total was 4886.22 and Farmer's paid the petitioner that amount.

The petitioner decided that, given the extent of damage, he was not satisfied with having the truck repaired, but instead wanted to trade it in for a similar brand new truck. His concern was that some damage might go undiscovered or inadequately repaired and cause problems in the future. He reasoned that he did not buy a brand new truck so he could end up with a truck having a lot of repair work done to it one year later; if he had wanted to own a heavily-repaired truck, he would have bought one like that in the first place at a much lower price than he paid for his brand new truck.

The petitioner used about $500 of the repair money to replace the rear bumper and tail light so the truck could be used temporarily. He saved the rest of the repair money, $4400, to apply toward the trade in transaction. He also reasoned that he would be willing to put $1700 out of his own pocket toward trading in so as to account for the betterment he would realize by ending up with a brand new truck rather than the almost one year old truck he had immediately before the accident. However about $8500 more

would be needed to complete the trade in transaction. Farmer's Insurance refused to pay any more than the repair cost.

The petitioner took the matter to conciliation court asking for the maximum amount allowed in conciliation court of $7500. The conciliation court did not accept the petitioner's request for money to trade in, but did award the petitioner $2039 based on the court's estimate of the difference between the book value before the accident and the value of the vehicle in the damaged condition.

The petitioner then appealed to the Minnesota district Court where he elaborated on the theory that ending up with a heavily repaired vehicle would constitute an intangible loss which could only be rectified by trading in on a brand new truck. He also stated that he would not normally have traded in for about 15 years. Even though the defense conceded liability, the district court ruled against the petitioner, citing Minnesota's Property damage law, which only requires repair or, alternately, the difference in value before and after the accident. Since the petitioner had not presented evidence of the value of the vehicle in the damaged condition, the district court, on request of the defense attorney, over ruled the conciliation court and ordered the petitioner to repay the $2039 awarded in conciliation court. The district court ruled that the petitioner could not recover the intangible loss he requested because the law does not provide for it.

On appeal to the Minnesota Appeals Court, the ruling of the District Court was affirmed. The Appeals Court decision states:

> Tekse argues that he has a constitutional right to recover damages on another theory besides property- damage law. But the constitution creates no such right.

The petitioner then appealed to the Minnesota Supreme Court, but his petition was denied on November 18, 2003.

Contention in Support of Petition:

The United States Supreme Court should rule of this case because of the large number of similar automobile accents that occur every year. The current practice of justice, as encountered by the petitioner, is to essentially assume that repair of a severely damaged vehicle restores it entirely to the pre accident condition, thereby leaving it up to the victim to prove otherwise if problems arise later on. Such proof may be virtually impossible to produce as time elapses. Furthermore, the loss of security and piece of mind of ending up with a vehicle which has been severely damaged and then repaired is in itself an intangible loss.

A ruling by the United States Supreme Court acknowledging the intangible loss in this case and designating how that loss should be resolved would spare future victims of this type of accident the time expense, and frustration of trying to pursue their claim through the court system. This case could have been resolved in conciliation court if such a High Court ruling had previously been made.

STATE OF MINNESOTA

IN SUPREME COURT

A03-144

Craig Tekse,

Petitioner,

vs.

William and Dianne Mitchell,

Respondents.

OFFICE OF
APPELLATE COURTS
NOV 18 2003
FILED

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of Craig Tekse for further review be, and the same is denied.

Dated: November 18, 2003

BY THE COURT:

S/_____
Kathleen A. Blatz
Chief Justice

This opinion will be unpublished and
May not be cited except as provided by
Minn. Stat 480A.08, subd. 3 (2002)

STATE OF MINNESOTA
IN COURT OF APPEALS
A03-144

Craig Tekse,
Appellant,

Vs

William Mitchell, et al.,
Respondents.

Filed August 26, 2003
Affirmed
Forsberg, Judge*

Meeker County District Court
File No. C0-02-385

Craig Tekse, 3735 Orchard Avenue North, Minneapolis, Mn 55422 (pro se appellant)
Matthew P. Kostolnik, J. Vicent Stevens, Gislason & Hunter LLP, Suite 215E, 9900 Bren Road East, P.O. Box 5297, Minnetonka, Mn 55343-2297 (for respondents)

Considered and decided by Randall, Presiding Judge, Hudson, Judge, and Forsberg, Judge.

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*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn Const. Art VI, %10.

UNPUBLISHED OPINION

FORSBERG, Judge

After his vehicle was damaged in an automobile accident, appellant received from respondent's insurer a check for the cost of repairs. Appellant claimed further "intangible losses," such as possible undiscovered damages and loss of peace of mind in driving the now-repaired vehicle, and sought damages to allow him to trade in his vehicle to obtain a new one. The conciliation court awarded him damages and the insurer paid the additional damages. On appeal, the district court rejected his claims and ordered him to repay the additional damages awarded by the conciliation court. Because the district court did not err in directing a verdict for respondents when it concluded that the conciliation court had awarded appellant an overpayment, we affirm.

FACTS

Craig Tekse appeals from a district court judgment for $2064 in favor of William and Dianne Mitchell. The district court concluded that in conciliation court, Tekse had received this amount in overpayment for damages incurred to Tekse's pickup truck as a result of an accident caused by William Mitchell.

On January 27, 2002, Tekse's truck was struck from behind by a vehicle driven by William Mitchell. Mitchell conceded liability for the accident. Farmers Insurance Company, the Mitchell's insurer, estimated the cost for repairs to be $4,886.22. Tekse also obtained his own estimate of the damage, which was about $1000 less than the sum estimated by Farmers. When he received the check for $4,886.22 from the insurance company, Tekse cashed it but did not repair his

truck, other than to replace the rear bumper and pound out some parts to make the truck drivable.

Tekse then filed suit in conciliation court, claiming that the insurance check covered only the repair costs and that to return the truck to its pre-accident condition, he would have to purchase a new vehicle at a cost of $10,200. Therefore, he asked for $7,500 plus costs, which would have resulted a total award greater than needed to purchase a new truck. In conciliation court, he was awarded $2,064 in uncompensated damage, the difference between the truck's blue book value of $9,925 and the sum of its current value ($3,000) and the insurance payment already received ($4,886), plus a $35 filing fee.* Farmers then issued a check for $2064, which Tekse cashed.

Tekse then appealed to district court. He contended that the conciliation court award would still require that he par $8,200 out-of-pocket for a new truck, which he believed was too much considering that the accident was not his fault. Tekse maintained that although the conciliation court award would enable him to trade in the truck as if he had traded it in the day before the accident, he had no intention of trading in the truck before the accident occurred and would likely have kept it for about 15 years. He stated that he was willing to contribute $1700 toward the cost of a new truck, but that was all.

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*The record shows that the conciliation court mistakenly awarded Tekse $2,064 when the total award should have been $2,074 ($2039 in uncompensated damages, plus a $35 filling fee).

The district court, after a court trial, found that although Tekse had presented no evidence of a diminished value for his truck, he believed that he was entitled to compensation for "intangible losses," such as possible undiscovered damages and loss of peace of mind in driving a damaged truck, even if it were repaired. The district court granted the Mitchells' motion for a directed verdict, concluding that Tekse's damages were zero because he had been fully compensated for the damage to his truck in the amount of $4,886.22, and he had received an overpayment in the amount of $2,064. Consequently, the Mitchells were entitled to judgment against Tekse for the amount of overpayment plus interest, cost, and disbursements. This appeal followed.

Decision

A district court may grant a motion for a directed verdict when the evidence is insufficient, as a matter of law, to present a factual question. *Wall v. Fairview Hosp. & Healthcare Servs.,* 584 N.W.2d 395, 405 (Minn.1998). This court reviews de novo the district court's ruling on a directed verdict. *Kaiser-Bauer v. Mullan,* 609 N.W.2d 905,910 (Minn. App. 2000), *review denied* (Minn.July 25,2000).

If personal property is damaged, but not destroyed, the plaintiff may elect one of two measures of damage. *O'Connor v. Schwartz,* 304 Minn.155, 158, 229 N.W.2d 511, 513 (1975) (relying on Restatement, Torts, 928). He may either recover the difference in value of the property before and after the harm, or the reasonable cost of repair. *Id.* If repairs have not fully restored the property, the owner is entitled to the remaining diminution in value as long as the total damages awarded do not exceed (1) the difference in value of the property before and after the damage, or (2) the cost of restoring the property to substantially its former value, whichever is less. *Rinkel v. Lee's Plumbing & Heating co.* 257 Minn. 14, 20, 99 N.W.2d 779, 783 (1959).

The comment to the Minnesota Civil Jury Instruction Guide, CIVJIG 92.10, further explains the governing law:

> A claimant suing for less than total destruction to his property has an election under the law of damages to choose the cost of repair or the value before and after the accident. This election is exercised by the evidence introduced by the claimant.
>
> *****
>
> If plaintiff fails to elect his measure of damages and introduces evidence of the difference in value of the automobile before and after the accident and also the cost of repair, plaintiff is deemed to have elected as his measure of damages that which will give the lowest recovery.

4A Minnesota Practice, CIVJIG 92.10 (1999) (citation omitted).

In this case, it is unclear from the record before us whether Tekse introduced evidence both of the cost of repairing the truck and of its difference in value before and after the accident. The conciliation court apparently considered the blue book value of the truck in making its initial award of damages. But whether or not we deem Tekse to have exercised his election of damages, the result remains the same. He definitely introduced evidence of the cost of repairs, which was the $4,886.22 that he received from the insurance company. Because this cost of repairs was less than the measure of the difference in value of the truck before and after the accident, the cost of repairs controls as the proper measure of damages. Therefore, the district court acted properly in holding that the conciliation court erred in

awarding Tekse damages over and above the cost of repairing his truck, and directing a verdict for the Mitchells.

Tekse argues that he has a constitutional right to recover damages on another theory besides property-damage law. But the constitution creates no such right. "'Compensation is what the law aims to give in such cases.'" *Kopischke v. Chicago, St. P., M. & O Ry. Co,* 230 Minn. 23, 30, 40 N.W.2d 834, 839 (1950) (quoting Justice Mitchell in *Keyes v. Minneapolis & St. L. Ry. Co.*, Minn. 290,294,30 N.W. 888, 890 (1886)). Tekse further contends that he has a right to recover for intangible losses, such as the risk and loss of security in driving a vehicle that was damaged in an accident, even if repaired. But, again, the law provides for no such recovery. *See, e.g. Giacomino v. Tri-State Ins. Co.,* 595 N.W.2d 530, 532 (Minn. App. 1999) (holding that owner of antique car that was totally destroyed could recover only market value, not replacement value, of destroyed vehicle, even though owner claimed that market value was not an accurate reflection of "special value" that car had to him).

Affirmed.

s/_____

August 15, 2003

STATE OF MINNESOTA IN DISTRICT COURT

COUNTY OF MEEKER EIGHTH JUDICIAL

DISTRICT

Court File No. C0-02-385

Craig Tekse,
Plaintiff,
Vs.
William Mitchell and
Dianne Mitchell,
Defendants.

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER FOR JUDGMENT

The above-named matter came before the undersigned Judge at the Meeker County Courthouse in Litchfield, Minnesota on January 21, 2003 for a Court Trial on Plaintiff's appeal from a conciliation court judgment in his favor. The Plaintiff appeared personally, without counsel; Defendant, Dianne Mitchell, appeared personally and was represented by Matthew P. Kostolnik, Attorney at Law.

Based on the evidence adduced at the trial the Court makes the following:

FINDINGS OF FACT

1. On February 27, 2002, The Plaintiff's vehicle was stopped on Highway 169 in Brooklyn Park, Minnesota. Plaintiff was in a left turn lane waiting for the left turn arrow to turn green when the right rear corner of his pickup was struck by the left front portion of a car driven by Defendant, William Mitchell.

2. Defendant conceded the issue of liability at the trial, leaving only damages as the sole issue to be determined by the Court.
3. At the time if the collision, the Plaintiff was driving a 2001 Dodge BR 1500 two-wheel drive pickup that he had purchased new in February 2001. At the time of the damage estimate of Plaintiff's pickup it had an odometer reading of 17,536 miles.
4. Approximately four days after the collision, a claims adjuster from the Defendant's insurer went to the Plaintiff's home to view the damaged pickup and the adjuster provided an estimate for the repair of the damage. Plaintiff submitted this repair estimate (exhibit 3), which indicated a cost of repair in the amount of $4,886.22.
5. Plaintiff testified he obtained his own estimate for repairs prior to obtaining the estimate of the Defendant's insurer. The estimate obtained by Plaintiff was approximately $1,000 less than that shown in exhibit number 3.
6. Plaintiff acknowledged receiving and cashing the Defendant's payment of $4,886.22, but further testified that has not repaired his pickup other than to replace the rear bumper and pound out some metal parts to make the pickup driveable, all of which he did himself.
7. At the conciliation court trial, Plaintiff was granted judgment for $2039 plus filing fee ($35) determined as follows:

    $9,925.00 Pre-collision Blue Book Value
    -3,000.00 Post collision value
    -4.886.00 Insurance payment to Plaintiff

8. Plaintiff perfected his appeal of the conciliation court Judgment on May 14, 2002.
9. Defendant's insurance company issued plaintiff a

Check in the amount of $2064 pursuant to the conciliation court judgment. Plaintiff cashed this check on May 22, 2002.

10. At the District Court Trial, Plaintiff presented no evidence of diminished value of his damaged pickup.

11. Plaintiff believes he is entitled to be compensated for his "intangible losses", such as possible undiscovered damages and loss of peace of mind in driving a damaged pickup, even if he had it repaired. Plaintiff's solution is to obtain a new model pickup of the same model and equipment to which he would contribute $1,700, acknowledging that he would be improving his situation by having a one year newer vehicle.

12. At the close of Plaintiff's case, Defendant moved for a Directed verdict based of the evidence presented at the Trial. Defendant also moved for judgment in its favor In the amount of $2,064 plus interest, costs and disbursements.

13. The Defendant's motion was granted by the Court.

Based on the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. Plaintiff's damages are zero dollars because the Defendant has fully compensated him for the damages to his pickup in the amount of $4,886.22.

2. Plaintiff has received an overpayment from the Defendant's insurer in the amount of $2,064.

3. Defendant is entitled to judgment against Plaintiff in Amount of $2,064 plus interest at the judgment rate from May 22, 2002 to the date of trial, together with costs and disbursements.

LET THE JUDGMENT BE ENTERED ACCORDINGLY.

DATED: January 22, 2003

"s/_____
DAVID L.MENNIS
Judge of District Court

I certify that the above Findings of Fact constitute the judgement of the Court.

Dated;_____,2003 Linda Jagush, Meeker
Co. Court Administrator

By_____
Deputy Court
Administrator

Plaintiff #1
Craig Tekse
3735 Orchard Av N
Mpls, Mn 55422
Plaintiff #2

Vs.

Defendant #1
William Mitchell
805 e. 2nd St.
Litchfield, Mn 55355

Defendant #2
Dianne Mitchell
805 e. 2nd St.
Litchfield, Mn 55355

State of Minnesota Conciliation Court

County	Judicial District	Case No.
Meeker	Eighth	S8-02-84

Order for Judgment On Claim and Counterclaim

Appearances

__Plaintiff #1 __Neither Party
__Plaintiff #2 __Contested
__Defendant #1 __Default
__Defendant #2 __

Upon evidence received, IT IS ORDERED:
Plaintiff is entitled to judgment against Defendants for the sum of $2039.00, plus fees of $35.00, disbursements of $_____, and conditional costs of $_____, for a total of $2064.00.

__ Judgment shall be entered in favor of_____(without) (damages)

__ _____'s claim is dismissed without prejudice.

__ _____'s claim is dismissed with prejudice.

__ _____ shall immediately return_____ _____to the _____ and that the Sheriff of the county in which the property is located is Authorized and directed to effect repossession of such Property according to M.S. 491A.01 subd.5, and turn the Property over to _____

__Other / xx Memo: $9925 Blue Book
($3000) Current Value
($4886) Insurance Payment
$2039 Uncompensated Damage

Dated: 4/23/02 Judge: s/_____

JUDGMENT is hereby declared and entered as stated in the Court's Order for Judgment set forth above, and the Judgment shall become finally effective on the date Specified in the notice of judgment set forth below.
Dated: 4/23/02 deputy: s/_____

NOTICE: THE PARTIES ARE HEREBY notified that Judgment has been entered as indicated, but the Judgment is stayed by law until 5-16-02, 4:30 p.m. (to allow time for an appeal/removal if desired).
THE PARTIES ARE FURTHER NOTIFIED that if the cause is removed to district court and the removing party does not prevail, as provided in Rule 524 of Minnesota General Rules of Practice for the District Courts, the opposing party will be awarded $50 as costs.
Dated: 4/23/02 Deputy: s/_____

Transcript of Judgment: I certify that the above is a correct transcript of the Judgment entered by this court.
Dated:_____ Court Administrator/Deputy _____